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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF: D.H., R.W., and T.W.,	)	
	)	
SABRINA SMITH,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A03-0707-JV-303
	)	
LAKE COUNTY OFFICE OF FAMILY AND CHILDREN,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
Honorable Mary Beth Bonaventura, Judge
Cause Nos. 45D06-0610-JT-124, 45D06-0610-JT-123 and 45D06-0610-JT-122

November 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Appellant-respondent Sabrina Smith appeals from the involuntary termination of her parental rights with respect to her minor children, D.H., R.W., and T.W. Specifically, Smith maintains that the evidence was insufficient in that appellee-petitioner Lake County Office of Family and Children ("OFC") failed to show that the conditions resulting in the children's removal would not be remedied or that the continuation of the parent-child relationship posed a threat to the well-being of the children.

We affirm.

FACTS AND PROCEDURAL HISTORY

Smith is the mother of D.H., born March 10, 2003; R.W., born December 28, 2000; and T.W., born January 19, 1999. The OFC became involved with Smith and the children in December 2004, when it was "indicated"[1] that Daniel Harvey—Smith's boyfriend and the father of D.H.—was allegedly molesting T.W. OFC personnel had Smith sign a safety plan, which provided that she would protect her children from further abuse. The plan also directed Smith to keep the children away from Harvey.

During the first week of July 2005, Tina Kozlowski, the OFC caseworker assigned to the case, received another report that T.W. had been sexually abused. Kozlowski went to the local hospital where T.W. was being treated and spoke with Smith, T.W., and the police. T.W., who was six years old at the time, explained that she was tired of her mother's

[1] A case manager with the OFC testified that an "indicated" report means that the agency is "pretty sure that some type of abuse or neglect has taken place," but there is not enough evidence to establish that it definitely occurred. Tr. at 19.

boyfriend doing "nasty things to her," including placing his finger and penis in her vagina. Appellee's Ex. 1. T.W. also reported that Harvey had placed his mouth on her vagina. When Smith was questioned, she acknowledged that reports had been made regarding Harvey's inappropriate sexual contact with T.W. However, Smith had continued her involvement with Harvey and had permitted him to be around the children. Smith stated that she did not protect the children from Harvey because she was fearful that he would harm her. Thereafter, OFC personnel removed all three children from Smith and placed them in foster care.

At a detention hearing that was held on July 5, 2005, Smith was ordered to participate in a number of services including psychological testing, drug and alcohol evaluation and treatment, parenting classes, supervised visits with the children, and domestic violence counseling. The trial court also ordered that Smith was to have no contact with Harvey and that Harvey was not to have any contact with the children. Smith was also ordered to provide suitable housing for herself and the children once they were returned to her.[2]

Smith's cooperation with OFC personnel diminished after several months. Specifically, Smith failed to keep her counseling appointments and, of the thirteen sessions that were scheduled between December 9, 2005, and April 4, 2006, Smith attended only two of them. She either cancelled the remaining appointments or did not appear. Smith also missed several drug screen appointments.

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[2] Harvey was charged with two counts of child molesting on July 9, 2005. Appellee's Ex. 4. Following a jury trial, Harvey was found guilty as charged in November 2006. CASA Ex. 1.

Although Smith exercised her visitation with the children under the case plan, it was revealed that she told T.W. on at least one occasion to recant her story of Harvey's molestations. The evidence also showed that while Smith was ordered to find suitable housing, she failed to do so. In fact, it was discovered that Smith occasionally left the children in Harvey's custody while she was at work.

On October 6, 2006, the OFC filed a petition to terminate Smith's parental rights as to all three of the children.[3] At the termination hearing that commenced in March 2007, Smith admitted that she did not request any assistance from the OFC. Smith also acknowledged that she refused to leave telephone messages when attempting to contact the case manager. The OFC presented evidence that it had a plan for the adoption of all three children.

On March 29, 2007, the trial court entered an order terminating Smith's parental rights. Smith now appeals.

DISCUSSION AND DECISION

In addressing Smith's claims that the OFC failed to meet its burden of proof, we first note that when reviewing termination of parental rights proceedings on appeal, this court neither reweighs the evidence nor judges the credibility of witnesses. See Judy S. v. Noble County Office of Family & Children (In re L.S.), 717 N.E.2d 204, 208 (Ind. ct App. 1999), trans. denied. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that evidence. Id. In

[3] Although the petitions also named the children's fathers and two of them participated in the termination hearing—including Harvey—none are parties to this appeal.

deference to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. Id. If the evidence and inferences support the trial court's decision, we must affirm. Id.

The involuntary termination of parental rights is the most extreme sanction that a court can impose. Id. Termination severs all rights of a parent to his or her children. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Ferbert v. Marion County Office of Family & Children (In re T.F.), 743 N.E.2d 766, 770 (Ind. Ct. App. 2001), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id. at 773. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code Section 31-35-2-4(b)(2). Thus, the State must prove:

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county

> office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal will be remedied, the trial court must judge the parent's fitness to care for his children at the time of the termination hearing. Newby v. Boone County Div. of Family & Children (In re L.V.N.), Matter of L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. D.J. v. LaGrange County Div. of Family & Children (In re D.J.), 755 N.E.2d 679, 684 (Ind. Ct. App. 2001), trans. denied. And the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. As noted above, parental rights may be terminated when

parties are unable or unwilling to meet their responsibilities. In re T.F., 743 N.E.2d at 776. Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. Jones v. Gibson County Div. of Family & Children (In re B.D.J.), 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). "[C]hildren should not be compelled to suffer emotional injury . . . or instability to preserve parental rights." In re L.S., 717 N.E.2d at 210.

As noted above, Smith initially cooperated with the caseworkers. However, Smith stopped contacting her counselors and attending appointments after two months, stating that she had "run into some bad luck . . . [her] purse was stolen, she was fired from her job, and there was some incident with her car." Tr. at 123-25. In light of the numerous appointments that Smith either cancelled or failed to appear for, the purpose of the counseling and the primary reason for the children's removal—the incidents of molestation—could not even be addressed. Id. at 109-10. As a result, the caseworkers and counselors were concerned for the children's safety, and they concluded that Smith lacked the ability to raise and protect the children. Id. at 127, 130. The OFC case manager testified that Smith had not made any progress during the CHINS proceedings. Id. at 57, 58, 61. Thus, because Smith failed to cooperate with the OFC personnel, it was apparent that the reunification process could not even begin.

We also note that while Smith had been ordered to obtain suitable housing for herself and her children, she failed to do so. Indeed, Smith experienced month-long periods of

homelessness. Id. at 145, 188. As noted above, even after the report of sexual abuse in December 2004, Smith had moved the children in with Harvey even though she had been told to keep Harvey away from them. Id. at 19, 183, 185-86. Moreover, Smith had occasionally left the children with Harvey while she was at work. And once the children had been placed in foster care, Smith lived either with Harvey, with some friends, or at her grandmother's house, which was too small to accommodate the children. Id. at 19, 145, 183-88.

In considering the foregoing, we recognize that the trial court heard the testimony of all of the witnesses at the final hearing, observed their demeanor, and judged their credibility. As a reviewing court, we defer to the trial court and may not weigh the testimony of witnesses. Hence, we conclude that the OFC presented clear and convincing evidence that Smith's parental rights should be terminated pursuant to Indiana Code Section 31-35-2-4.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.